

REMARKS

Favorable reconsideration of the above-identified application, in light of the present amendment and in view of the following discussion, is respectfully requested.

On the third page of the Advisory Action, claims 1-9 were rejected as set forth in the previous Office Action mailed on May 4, 2005.

In the Office Action mailed on May 4, 2005, claims 1-7 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Pat. No. 6,643,259 (Borella). Claims 8-9 were rejected under 35 U.S.C. § 102(b) as being anticipated by European patent No. EP 459,134 A2 (Georgiadis).

According to Borella, when network congestion is recognized by a first network device, a Transmission Control Protocol (TCP) process on the first network device limits a rate at which packets are injected into the network by adjusting a packet rate value. In particular, the TCP process on the first network device limits a value "cwnd" that indicates how many packets are allowed to be circulated in the network. See Borella, column 8, lines 34-46.

According to the present invention, as defined by claim 1, for example, communication between a client and server is monitored. If the communication data size in the connection between the client and the server decreases with respect to a recorded maximum data size value, a determination is made that the server is under "high load." In other words, for example, when the load on the server increases, the amount of data forwarded on the communication line decreases. See Specification of the Present Invention, Page 20, lines 7-15.

The above-identified feature is recited, for example, in independent claim 1, by the language, "judging, if the communication data size of the connection decreases with respect to the recorded maximum size value, that the server is under a high load."

On the last page of the Advisory Action, the Examiner states that each packet in Borella has an associated size. The Examiner asserts that a communication data size of a connection can be determined based on an absence of packets. Assuming *arguendo* that a communication data size of a connection can be determined based on an absence of packets, in Borella, nevertheless, it is the absence of acknowledgement of data packets that determines network congestion, not the communication data size of a connection. Borella clearly states that "[w]hen network congestion is recognized by the first network device 14, *by the absence of acknowledgement packets. . .*" See Borella, column 8, lines 34-38. In Borella, in other words, after a determination is made that there is an absence of acknowledgement of data packets, the recognition of network congestion occurs, in response thereto. Applicants respectfully submit that, in Borella, it is irrelevant that a communication data size of a connection can be determined

(assuming that such can, in fact, be determined).

Further, Borella does not provide support for the Examiner's assertion that a communication data size of a connection can be determined based on an absence of packets. Assuming *arguendo* that a communication data size of a connection *can* be determined based on an absence of packets, merely having capability to determine is not tantamount to actually determining. In other words, Borella does not provide that such a determination *is* actually performed. Therefore, Borella does not teach, "judging, if the communication data size of the connection decreases with respect to the recorded maximum size value, that said server is under a high load."

On the last page of the Advisory Action, the Examiner further asserts that when Borella's "cwnd" value decreases from the "ssthresh" value, there is considerably higher load on the network. Applicants respectfully submit that the adjustment of the "cwnd" value occurs, in response to acknowledgement of packets, that is, in response to each ACK. Borella clearly states that, "[w]ith each new ACK received from the second network device, the first network device increases the "cwnd." See Borella, column 9, lines 44-47. Therefore, in Borella, it is not the adjustment of the "cwnd" value that determines network congestion, it is the acknowledgement of packets or lack thereof that determines network congestion. Borella clearly states that ". . . if the first network device does not receive an ACK, for any packet within time RTT+4A, it times out. . . . This is usually an indication of significant congestion." Applicants respectfully submit that adjustment of the "cwnd" value is simply a *reaction* to network congestion, not a determination.

In light of the foregoing, Applicants respectfully submit that independent claims 1, 8, and 9 are patentable over Borella, as Borella does not teach, "judging, if the communication data size of the connection decreases with respect to the recorded maximum size value, that said server is under a high load," as recited in claim 1, for example (independent claims 8 and 9 recite language similar to that of independent claim 1).

In Georgiadis, a balancer process examines utilization values transmitted by monitors of the system. Although Georgiadis does not disclose information pertaining to exactly what information is included within the utilization values, Georgiadis suggests that the utilization values include information pertaining to amounts of time a particular transaction type takes to execute on the computer being monitored. See Georgiadis, page 5, lines 34-39. Thus, Georgiadis suggests that computer congestion is determined by monitoring each computer to determine an amount of time each transaction on the computer will take, not by a "communication data size of the connection," as in the present invention.

On the last page of the Advisory Action, the Examiner states that he considers the arrival

rate, queues, and overfilled buffers to all be indicative of a “communication data size.” Applicants respectfully submit that the overfilled buffers, queues, and arrival rates are simply consequences of a congested system. Unlike the present invention, in Georgiadis, a determination as to whether a server is under a high load does not occur by judging if the communication data size of the connection decreases as identified in the language of the claims of the present invention. Rather, in Georgiadis, it is system utilization, for example, CPU busy time, that determines whether a computer will be characterized as an overloaded computer. See Georgiadis, page 5, lines 26-27 and lines 29-31 (stating that based on the utilization values, the balancer process makes a decision whether one or more of the computers will be characterized as an overloaded computer).

Therefore, independent claims 8 and 9 are patentable over Georgiadis for at least the reasons presented above.

Applicants respectfully submit that new claim 14 is patentable over both references, as neither references teaches, “judging the load on the computer according to the amount of data communication,” as recited in claim 14.

Consequently, in light of the above discussion and in view of the present amendment, the above-identified application is believed to be in condition for allowance and an early and favorable action to that effect is respectfully requested.

If there are any additional fees associated with filing of the current Amendment, please charge the same to our Deposit Account No. 19-3935.

Respectfully submitted,

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